

# SENTENCING COMMISSION MINUTES

<b>Committee</b>	<b>Utah Sentencing Commission</b>
<b>Date</b>	Wednesday, August 4, 2010
<b>Time</b>	Noon – 2 p.m.
<b>Location</b>	Utah State Capitol, Senate Bldg., Spruce Room
<b>Members Present</b>	Patrick Anderson, Paul Boyden, David Brickey, Rep. Lorie Fowlke, Curt Garner, Senator Jon Greiner, Dan Maldonado, Senator Ben McAdams, Mark Moffat, Judge Ric Oddone, Judge Gregory Orme, Mike Haddon for Tom Patterson, Kathy Reimherr, Doyle Talbot, Carlene Walker, Scott Reed for Kirk Torgensen
<b>Members Excused</b>	Judge Kevin Allen, Marlene Gonzalez, Ron Gordon, Judge Paul Maughan, Benjamin McMurray, Chief Ed Rhoades, Rep. Jennifer Seelig, Sy Snarr, Judge Stephen Van Dyke, Sheriff James Winder
<b>Staff &amp; Visitors</b>	Staff: Jo Lynn Kruse, Ben Peterson, Ned Searle, Jacey Skinner Visitors: Debra Moore, Dr. Moises Prospero, Gary Syphus
<b>Agenda Item</b>	<b>Welcome and Approval of Minutes</b>
<b>Notes</b>	Carlene Walker called the meeting to order and welcomed everyone. Paul Boyden made a <b>motion</b> to approve the April and June minutes. Mark Moffat <b>seconded</b> the motion which <b>passed unanimously</b> .
<b>Agenda Item</b>	<b>Review and Approval of 2010 Guidelines</b>
<b>Notes</b>	<p>Jacey reviewed the 2010 guideline changes as outlined in the June 2, 2010 minutes. Judge Orme made the <b>motion</b> to approve the changes. Patrick Anderson <b>seconded</b> the motion, which <b>passed unanimously</b>.</p> <p>Curt Garner, chair of the guidelines subcommittee discussed changes to the matrix. Jacey previously pointed out that child endangerment, death cases and child abuse homicides, which are now first degree offenses, have never fit in a column on the matrix. The Commission discussed whether to incorporate those into an existing column on the matrix or create a new column. That discussion led to a broader discussion as to the usefulness of the guidelines in 2<sup>nd</sup> degree manslaughter cases. Because manslaughter cases fall into two very different fact/intent categories- murder pleaded down to manslaughter and true manslaughter- criminal history plays a far less significant role in determining the amount of time the offender serves than it does in other categories of offenses. The length of stay is more dependant upon the facts and nature of the offense.</p> <p>The guidelines subcommittee decided to change the 1<sup>st</sup> degree murder column, box I and II from 16 and 18 years to 20 years, to more accurately reflect the statistical reality of actual sentences served. The next column, 1<sup>st</sup> degree death, is a new column that the committee recommends to provide guidelines for the two relatively new offenses of 1<sup>st</sup> degree child endangerment resulting in a death and 1<sup>st</sup> degree child abuse homicide. There are very few cases that fall in this area. Accordingly there isn't any data reflecting the kind of time offenders in this column would actually serve. The subcommittee decided to duplicate the numbers that currently exist in the 1<sup>st</sup> degree person column and review after a year or so to see if changes need to be made. Asterisks were put into the 2<sup>nd</sup> degree death column, with the following note at the bottom adding: *The statutory penalty range for this category is 1 to 15 years. The Board will consider all aggravating and mitigating factors in determining length of stay. Because the facts of the cases in this crime category are widely divergent and criminal history is less determinative than in other categories, a single guideline recommendation in this category is not helpful in determining the length of stay of an offender. Judge Orme made the <b>motion</b> to accept the guidelines with the footnote as amended. David Brickey <b>seconded</b> the motion, which <b>passed unanimously</b>.</p> <p>Dr. Ben Peterson discussed the 2<sup>nd</sup> Degree Death Sentencing Analysis, based on 8 years of statistics from the Utah DOC of offenders released from prison between 1/1/2003 and 12/31/2009. The data matches up with the perception of what the anecdotal evidence has been, i.e. there is a group of prisoners serving time for manslaughter, where they serve a shorter amount of time and then another group of people that pleaded down to manslaughter from murder, serving longer sentences. In this category, Length of Stay (LOS), is determined more by the facts of the case, rather than criminal</p>

	history.
<b>Agenda Item</b>	<b>Evidence Based Practice Review Subcommittee Probation Study</b>
<b>Notes</b>	<p>Some months ago we discussed forming a joint subcommittee with the Board of District Court Judges to talk about evidence based practices and how to implement those. Jacey talked with the courts and other interested agencies and parties and proposed that rather than do a joint committee, we create a subcommittee of the Sentencing Commission to look at evidence based practices in sentencing, in probation and across the board. It would be a committee of the Sentencing Commission with the addition of ad hoc members. The new subcommittee would look at probation issues, review probation in general and how we can more quickly move low-risk offenders off the probation caseload. Benji McMurray and Tom Patterson indicated before the meeting that they would be willing to participate. Kathy Reimherr, Rep. Lorie Fowlke, Patrick Anderson, Curt Garner, Mike Haddon and David Brickey volunteered to work on the subcommittee. Rep. Lorie Fowlke made the <b>motion</b> to create the subcommittee with ad hoc members. Mark Moffat <b>seconded</b> the motion, which <b>passed unanimously</b>.</p>
<b>Agenda Item</b>	<b>Use of Risk Assessments in Justice Courts</b>
<b>Notes</b>	<p>Dr. Moises Prospero, Director of the Criminal Justice Center, University of Utah, spoke about targeting high-risk domestic violence offenders to separate them from the low-risk offenders. 10 – 20% of the domestic violence offenders are responsible for 80 to 90% of offenses committed. There is a real need to identify those high-risk persons. The SARA (Spousal Assault Risk Assessment) is a 20-item, paper-and-pencil checklist designed to screen for risk factors of spousal or family-related assault. It is a quality-control checklist that is not only statistical but also includes clinical assessment by administrators. Using SARA helps in providing better sanctions and treatment, and to ensure safety of victims. Dr. Prospero would like to see SARA used statewide and offered to bring statistical data to a future meeting to show its effectiveness.</p> <p>Ned Searle from CCJJ has been working with Dr. Prospero and Jacey on a Domestic Violence Sentencing Matrix for use in Justice Courts, because they do not have access to the same information that District Courts do. Jacey suggested that we create a work group from the commission to evaluate the feasibility of using risk assessments in Justice Courts throughout the state. Mark Moffat and Kathy Reimherr offered to be on that committee.</p>
<b>Agenda Item</b>	<b>Felony Theft Penalties</b>
<b>Notes</b>	<p>Several members of the commission have expressed interest in evaluating the current scheme for enhancing theft charges to felonies. Data is currently being gathered from the DOC by Cliff Butter and Dr. Ben Peterson on felony theft penalties. Last year the Legislature changed the monetary value for what determines a penalty for theft. A third degree felony now has the value of property exceed \$1,500 up to \$5,000. There are many other ways a theft can fall into a third degree felony category. It can be monetary, it can be the nature of the item taken or it can be an enhanced penalty based on the fact that someone has prior convictions for theft, or a theft related crime.</p> <p>Many currently in prison are there for stealing items of nominal value because on a third offense, monetary value is immaterial. We do not know right now how many prisoners fit into this category, and would like to study the issue to see what we find and develop some solution. Paul Boyden made the <b>motion</b> to have a small workgroup study the issue of felony theft penalties. Mark Moffat <b>seconded</b> the motion which <b>passed unanimously</b>. Scott Reed said that Kirk Torgensen will help and David Brickey also offered to help.</p>
<b>Next Meeting</b>	The next meeting will be on October 6, 2010, Utah State Capitol Complex, Senate Bldg., Spruce Room

Minutes prepared by Jo Lynn Kruse – Administrative Assistant, CCJJ